United Workers of America and Local 32B-32J, Service Employees International Union and AM Property Holding Corp. and Media Technology Centers, LLC, a single employer, a joint employer with Planned Building Services, Inc. Case 2–CB-18037

### March 27, 2008

# ORDER GRANTING MOTION FOR RECONSIDERATION<sup>1</sup>

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On September 13, 2007, the National Labor Relations Board issued a Decision and Order in this proceeding.<sup>2</sup> The Board found, inter alia, that the Respondent Union, United Workers of America (UWA) did not violate Section 8(b)(1)(A) and (2) of the Act by accepting recognition from Planned Building Services, Inc. (PBS) as the collective-bargaining representative of a unit of maintenance employees at a building at 80-90 Maiden Lane in New York City, and by maintaining a collectivebargaining agreement covering those employees. In AM Property Holding Corp. (AM Property),<sup>3</sup> a related case in which it was alleged that PBS violated Section 8(a)(2) and (1) by extending recognition to the UWA at 80-90 Maiden Lane, the Board had declined, for procedural reasons, to find that the recognition was unlawful. Accordingly, in this case the Board dismissed the allegation that the UWA's acceptance of recognition and maintenance of the agreement were unlawful.<sup>4</sup>

On October 12, 2007, the General Counsel filed a Motion for Reconsideration in this case. On the same day, the General Counsel also filed a Motion for Reconsideration in *AM Property*, supra, contending that the Board had erred in dismissing the allegation that PBS had unlawfully recognized the UWA. In his motion here, the General Counsel contends that if the Board grants his motion in *AM Property* and finds that the extension of recognition was unlawful, it follows that the Board must

find the UWA's acceptance of recognition to be unlawful as well.<sup>5</sup>

Section 102.48 of the Board's Rules and Regulations permits a party in "extraordinary circumstances" to move for reconsideration of a Board decision. We find that the General Counsel has shown extraordinary circumstances here that warrant reconsideration of the Board's decision.

As stated above, the Board in the underlying case refused to find the UWA's acceptance of recognition to be unlawful solely because it had not found PBS's extension of recognition to be unlawful in AM Property. However, as explained in our Order Granting the General Counsel's Motion for Reconsideration in AM Property, 6 we have found that the Board committed material error in refusing to consider whether the UWA had the support of an uncoerced majority of PBS employees at the time that PBS granted recognition. On reconsideration, we have found in that case that the UWA in fact did not enjoy uncoerced majority support at the time of recognition, and therefore that PBS violated Section 8(a)(2) and (1) by recognizing the UWA as the representative of its employees and subsequently maintaining a collectivebargaining agreement with the UWA. It therefore follows that the UWA's acceptance of recognition from PBS and its maintenance of the collective-bargaining agreement likewise violated Section 8(b)(1)(A), and we so find. We therefore grant the General Counsel's Motion for Reconsideration in this case, and we shall modify our Order and notice accordingly.

# AMENDED CONCLUSION OF LAW

2. By accepting recognition from PBS and by maintaining a collective-bargaining agreement with PBS at 80-90 Maiden Lane when it did not have the uncoerced support of a majority of the PBS employees, the Respondent violated Section 8(b)(1)(A) of the Act.

# AMENDED REMEDY

Having found that the Respondent violated Section 8(b)(1)(A), we shall order it to cease and desist from accepting recognition from PBS as the representative of PBS's maintenance employees at 80-90 Maiden Lane, and from maintaining and giving effect to the May 1, 2000–April 30, 2003 collective-bargaining agreement with PBS, unless and until it is certified by the Board as the representative of those employees pursuant to Section

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

<sup>&</sup>lt;sup>2</sup> 350 NLRB 1268.

<sup>&</sup>lt;sup>3</sup> 350 NLRB 998 (2007).

<sup>&</sup>lt;sup>4</sup> In *AM Property*, Member Liebman would have found that PBS's recognition of the UWA violated the Act. See 350 NLRB at 1013. She therefore would have found that the UWA's acceptance of recognition and maintenance of the collective-bargaining agreement was also unlawful. 350 NLRB at 1270 fn. 11.

<sup>&</sup>lt;sup>5</sup> The General Counsel also argues that the Board should find the UWA's acceptance of recognition to be unlawful even if it does not find PBS's extension of recognition unlawful, because the UWA failed to answer the complaint allegation in this case, and thus should be deemed to have admitted that its acceptance of recognition was unlawful. Because we are granting the General Counsel's motion on other grounds, we need not pass on this argument.

<sup>&</sup>lt;sup>6</sup> 352 NLRB 279 (2008).

9(c) of the Act. We shall also order the Respondent, jointly and severally with PBS, to reimburse the unit employees, with interest, for all dues and fees paid or withheld pursuant to the union-security and checkoff provisions of the agreement. However, reimbursement will not extend to employees who voluntarily became members of UWA before May 1, 2000. See, e.g., *Dairyland USA Corp.*, 347 NLRB 310, 314 (2006).

## **ORDER**

The General Counsel's Motion for Reconsideration is granted. Accordingly, the Board's Decision and Order is modified as set forth below, and the Respondent, United Workers of America, its officers, agents, and representatives, shall

- 1. Cease and desist from
- (a) Telling employees that they are required to sign union authorization cards.
- (b) Accepting assistance and support from Planned Building Services, Inc. (PBS) in obtaining employee authorization to deduct union dues from their paychecks.
- (c) Accepting recognition from and executing a collective-bargaining agreement with PBS covering PBS employees at 80-90 Maiden Lane unless and until UWA is certified by the Board as the collective-bargaining representative of a unit of those employees pursuant to Section 9(c) of the Act.
- (d) Maintaining and giving effect to its May 1, 2000–April 30, 2003 collective-bargaining agreement with PBS at 80-90 Maiden Lane, or to any renewal, extension, or modification thereof, unless and until UWA is certified by the Board.
- (e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Jointly and severally with PBS, reimburse all present and former PBS employees at 80-90 Maiden Lane for all dues, initiation fees, and other moneys paid by or withheld from them pursuant to the union-security and dues-checkoff provisions of the May 1, 2000–April 30, 2003 collective-bargaining agreement, plus interest as

PBS is not a party to this proceeding. However, in *AM Property*, supra, 352 NLRB at 281, we are finding that PBS unlawfully recognized and entered into the collective-bargaining agreement with UWA, and ordering PBS, jointly and severally with UWA, to reimburse the PBS employees in the manner described above.

provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). However, reimbursement does not extend to those employees who may have voluntarily become members of UWA prior to May 1, 2000.

- (b) Within 14 days after service by the Region, post at its offices and meeting halls copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### **APPENDIX**

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT tell employees that they are required to sign union authorization cards.

WE WILL NOT accept assistance and support from Planned Building Services, Inc. (PBS) in soliciting employee authorization to deduct union dues from their paychecks.

WE WILL NOT accept recognition from and execute a collective-bargaining agreement with PBS covering PBS employees at 80-90 Maiden Lane unless and until we are

<sup>&</sup>lt;sup>7</sup> The complaint does not allege that the union-security and dues checkoff provisions were unlawful. Accordingly, we do not find that those provisions violated Sec. 8(b)(2). Nevertheless, we find it appropriate to order reimbursement of dues and fees exacted under those provisions, in order to afford complete relief for the unlawful extension and acceptance of recognition and maintenance of the agreement.

<sup>8</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

certified by the Board as the collective-bargaining representative of a unit of those employees.

WE WILL NOT maintain and give effect to our May 1, 2000–April 30, 2003 collective-bargaining agreement with PBS at 80-90 Maiden Lane, or to any renewal, extension, or modification thereof, unless and until we are certified by the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, jointly and severally with PBS, reimburse with interest all present and former PBS employees at 80-90 Maiden Lane for all dues, initiation fees, and other moneys paid by or withheld from them pursuant to the union-security and dues-checkoff provisions of the collective-bargaining agreement. However, reimbursement does not extend to employees who may have voluntarily become members of UWA before May 1, 2000.

UNITED WORKERS OF AMERICA